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Report of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories

Israeli practices affecting the human rights of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem**

Report of the Secretary-General

Summary

The present report has been prepared by the Office of the United Nations High Commissioner for Human Rights pursuant to General Assembly resolution 70/90. It focuses on Israeli practices affecting the human rights of Palestinians in the Occupied Palestinian Territory, with a particular focus on the use of force by Israel, arrest and detention practices and the application of collective punishment measures across the Occupied Palestinian Territory. The report provides details on how the lack of accountability for such violations feeds the cycle of violence and compromises prospects for sustainable peace and security.

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** The present report was submitted after the deadline to reflect the most recent developments.

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I. Introduction

1. The present report covers the period from 1 June 2015 to 31 May 2016 and is primarily based on monitoring conducted by the Office of the United Nations High Commissioner for Human Rights (OHCHR) and on information collected by other United Nations entities and non-governmental organizations.

2. The report does not provide a comprehensive account of all human rights concerns in the Occupied Palestinian Territory, nor does it address concerns arising from the actions of Palestinian authorities or Palestinian armed groups. For such an overview, the present report should be read in conjunction with other reports of the Secretary-General and the High Commissioner for Human Rights (see A/70/421, A/HRC/31/40 and Add.1, A/HRC/31/41 and A/HRC/31/44).

3. The reporting period was marked by an upsurge in violence that started in mid-September 2015 and continued into 2016, although it declined in intensity. According to the Office for the Coordination of Humanitarian Affairs and OHCHR, in the occupied territory, a total of 232 Palestinians, including 52 children, were killed and over 5,774 seriously injured, while 32 Israelis were killed and 356 seriously injured.[1]

4. In the occupied West Bank, the scale of deaths and injuries, in particular in the fourth quarter of 2015, made the reporting period the most deadly for Israelis and Palestinians since the end of the second intifada (2000-2005). Incarceration, including the administrative detention of children and adults, reached new records, while an increase in closures and checkpoints was reported in the occupied West Bank, including East Jerusalem. Unlawful practices, including punitive demolitions, revocations of residency and the withholding of bodies, resumed, occurring with alarming frequency.

5. The blockade of Gaza,[2] which entered its tenth year in 2016, continued to undermine basic human rights and economic prospects, as well as the availability of essential services, exacerbating poverty and aid dependency. Restrictions on freedom of movement and the use of force by Israel in the so-called access-restricted areas remained of particular concern.

6. The Secretary-General reiterates his view that a general sense of despair and frustration is growing under the weight of a half-century of occupation and a paralysed peace process. In the occupied West Bank, young Palestinians are resorting to violence, in particular lone-wolf attacks against Israelis, while Gaza has witnessed a rise in crime, violence and suicides, including by self-immolation. The lack of any significant movement towards a political resolution and ongoing violations of international human rights and humanitarian law are exacerbated by the lack of accountability for previous violations. That feeds the cycle of violence

[1] Office for the Coordination of Humanitarian Affairs and OHCHR. The number of Palestinians killed does not include nine Palestinians killed by Israelis other than the Israeli security forces. The number of Palestinians injured excludes injuries sustained from tear gas inhalation. There is no record of Israeli children having been killed as a result of the upsurge in violence during the reporting period.

[2] The term "blockade" has been used by the United Nations to describe Israel's imposition of prolonged closures and economic and movement restrictions in the Gaza Strip (see A/HRC/24/30, paras. 21 to 23, A/RES/69/93 and A/69/347).

and compromises chances for sustainable peace and security. Tackling impunity must be the highest priority for the parties.

II. Legal framework

7. A detailed analysis of the applicable international humanitarian and international human rights law framework and the corresponding obligations of duty bearers can be found in reports of the Human Rights Council (see A/HRC/12/37, paras. 5 to 9) and the Secretary-General (see A/69/347, paras. 3 to 6).

III. Implementation of General Assembly resolution 70/90

A. Use of force by Israeli security forces in the context of law enforcement

8. During the reporting period, OHCHR documented several incidents of Israeli security forces using apparent excessive force in the course of law enforcement operations (see A/HRC/31/40 and A/71/355). The Secretary-General is particularly concerned by the high number of apparent unlawful killings of Palestinians, including that of a 72-year-old woman, Tharwat al-Sharawi, shot by an Israel Defense Forces soldier in Hebron on 6 November 2015, allegedly during a car-ramming incident. Concerns over extrajudicial executions also arose with the killing of a 14-year-old girl, Hadeel Wajih Awwad, who was shot repeatedly by an off-duty police officer in West Jerusalem on 23 November while she lay wounded on the ground after having attacked bystanders with scissors. In both incidents, publicly available video footage showed repeated lethal use of firearms, which continued even after any possible threat had ended.

9. Questions of extrajudicial execution also arose in the death of Abdelfattah al-Sharif and Ramzi al-Qasrawi, who were shot dead after attacking soldiers at a checkpoint in Hebron on 24 March 2016 (see A/71/355, para. 38). According to witness testimony provided to OHCHR, both men were killed after they had been wounded and "neutralized" and no longer presented an imminent threat that could justify the intentional lethal use of a firearm. The killing of Abdelfattah al-Sharif received far more attention than that of Ramzi al-Qasrawi, owing largely to a widely circulated video recording which showed an Israel Defense Forces medic fatally shooting the wounded Abdelfattah al-Sharif in the head from a few metres away.

10. Another disturbing element of the video and corroborating witness accounts was that, although seriously wounded, Abdelfattah al-Sharif did not receive medical attention, despite the presence of at least two Magen David Adom ambulances and several Israel Defense Forces medics at the site. While the medics aided the wounded Israeli soldier, who was conscious and able to walk, they disregarded the more seriously injured Palestinian. A forensic pathologist has reportedly testified that had Abdelfattah al-Sharif been given medical treatment, he could have possibly been saved.[3]

[3] Yonah Jeremy Bob, "Pathologist in Hebron manslaughter case says terrorist could have survived if given treatment", *Jerusalem Post*, 16 June 2016.

11. Throughout the reporting period, OHCHR documented and raised concerns that Palestinians wounded by Israeli security forces were not being provided medical assistance, or that such assistance was being significantly delayed, including by blocking Palestinian ambulances and first responders (see A/HRC/31/40, para. 16). Those practices are inconsistent with international standards, for example, the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, which require assistance and medical aid to be rendered at the earliest possible moment. Such practices also amount to an arbitrary deprivation of the right to life.[4]

12. Additional concerns arose over the widespread use of live ammunition by Israeli security forces, in particular against stone-throwers and in the context of clashes, protests and demonstrations. A majority of Palestinians who died in such contexts were killed by live fire, which also injured 2,129 Palestinians, despite witness accounts and video footage on several occasions indicating that there was no imminent threat to life or serious injury to Israeli security forces or other bystanders that would have warranted the use of lethal force (see A/HRC/31/40, paras. 14 and 23).

13. The use of firearms by Israeli forces appears even more rampant in access-restricted areas, in particular against protestors along the perimeter fence.[5] Most of the 20 demonstrators killed during the reporting period, and over 30 per cent of those injured, were hit by live ammunition, compared with 10 per cent of injuries caused by firearms in the occupied West Bank.[6] The use of high velocity ammunition also caused excessive and unnecessary harm, often leading to long-term disability.

14. According to the United Nations Department of Safety and Security, apart from demonstrations, there were 798 shootings into access-restricted areas by Israeli security forces on sea and land, as a result of which three Palestinians were killed and 58 others injured. Based on OHCHR monitoring and available information, none of the victims appeared to present an imminent threat to life or serious injury to Israeli security forces that would have warranted the use of firearms and, in some instances, those hit were outside the designated restricted areas. At sea, the use of force, including live fire, injured nine fishermen and led to the destruction of 18 boats.[7]

15. In a case documented by OHCHR in early 2016, the Israeli navy pursued and opened fire on two fishing boats that were reportedly within the six-nautical-mile limit in force at the time and did not present a threat. One fisherman was hit

[4] After the incident involving Abdelfattah al-Sharif, Magen David Adom clarified its policy so that staff could treat attackers after Israeli security forces had searched the attackers and declared it safe to approach. Previously, staff had to await clearance from a sapper before approaching wounded attackers. Prior to December 2015, rules of the Israeli Medical Association also contributed to failures since they permitted medical professionals to treat victims before attackers, irrespective of who was more seriously wounded.

[5] As recounted in previous reports, the extent where access is permissible by land remains unclear. Areas up to 300 metres from the perimeter fence are generally considered "no-go" areas, and up to 1,000 metres as "high-risk" areas. Israel continues to enforce a six-nautical-mile fishing limit along the entire coast. However, between April and June 2016, it temporarily extended the fishing area limit in the south of the Strip to nine nautical miles.

[6] See www.ochaopt.org/humanitarian-overview-2015.

[7] The Gaza Fishermen's Union and the Protection Cluster: Occupied Palestinian Territory.

multiple times with rubber bullets and, according to medical records, sustained fractures to bones in his back, neck and face after one of the Israeli navy vessels rammed into his boat. The man is no longer able to work owing to significant physical and cognitive disabilities. Moreover, Israeli security forces confiscated his boat. Three other fishermen arrested during that incident were forced to undress before their boats were boarded. They were handcuffed, blindfolded and transported to the Israeli port of Ashkelon where they were held for several hours in a container before being released. One of the fishermen was subjected to lengthy interrogation. At no point were the fishermen informed of the reasons for their arrest, nor were they allowed to communicate with their families or provided with an opportunity to contact a lawyer.

16. With respect to the use of less lethal force, the Secretary-General has concerns about the frequent and often unwarranted resort to rubber-coated metal bullets, including their use at short range, in contravention of Israeli regulations (see A/HRC/31/40, para. 26). A total of 3,786 Palestinians were wounded by rubber-coated metal bullets during the reporting period. The black sponge bullets used by the Israeli police in East Jerusalem also cause serious injury.[8] At least 15 people, including 6 children and a 67-year-old woman, were injured by such ammunition during the reporting period, and about half of them lost sight in one eye.[9] The United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) raised concerns about such ammunition causing serious injuries to children in the Shu'fat refugee camp, as well as about the extensive use of tear gas by Israeli security forces in densely populated refugee camps, including in areas close to playgrounds.[10]

B. Hostilities

17. The 2014 ceasefire between Israel and Hamas has largely held. However low-level hostilities between Israeli security forces and Palestinian armed groups in Gaza during the reporting period resulted in 7 Palestinians being killed, of whom five were civilians, including 3 children, while at least 10 were wounded, including 3 children. An additional 6 Palestinians were killed and 49 wounded by explosive remnants of war. No Israeli casualties were reported.

18. During that period, Palestinian armed groups fired 112 rockets towards Israel, with 27 landing inside Israel. The launch of unguided missiles towards Israel continues to cause deep concern. Tunnel digging into Israel and Egypt, allegedly by Palestinian armed groups, was also reported. Meanwhile, Israeli forces conducted 92 incursions into Gaza and fired 80 missiles, mainly at alleged military

[8] According to the Association for Civil Rights in Israel, in July 2014, police in East Jerusalem began using black sponge-tipped bullets as a means to disperse demonstrations and riots, instead of the blue sponge-tipped bullets. The black bullets are twice as hard and heavy and their potential to cause injury is much greater.

[9] Association for Civil Rights in Israel, "Injuries caused by sponge bullets in East Jerusalem", 16 March 2016. Available from www.acri.org.il/en/2016/03/16/injuries-caused-by-sponge-bullets-in-east-jerusalem/.

[10] UNRWA, "Children in distress: raising the alarm for 2016 and beyond", Briefing Note, April 2016. Available from http://www.unrwa.org/resources/reports/children-distress-raising-alarm-2016-and-beyond.

installations of Palestinian armed groups. At least 113 shells were also reportedly fired by the Israel Defense Forces from land and sea.

19. The most significant exchange of fire took place between 4 and 7 May 2016. For the first time since the 2014 ceasefire, both the Izz el-Deen al-Qassam Brigades and Palestinian Islamic Jihad claimed responsibility for firing up to 40 mortars towards Israeli forces near the fence, reportedly in response to incursions by the Israel Defense Forces in Gaza. Israel responded with air strikes and shelling, killing one civilian and wounding five, and damaging an unspecified number of civilian structures.

20. The Secretary-General is concerned that all necessary precautions have not been taken by the Israel Defense Forces to minimize civilian casualties during its operations, as required under international humanitarian law. For example, on 12 March 2016, Israeli warplanes reportedly targeted a building in a training ground of the Izz el-Deen al-Qassam Brigades in northern Gaza in response to rocket fire the day before. Owing to the magnitude of the explosion, debris fell onto the ceiling of a nearby civilian's house, killing two children and wounding a sibling and their mother. Concerns arose over the size of the blast, especially considering that the structure targeted was 50 to 70 metres away from a civilian residential area housing approximately 500 people.

21. Similar concerns arose over an air strike conducted on 11 October 2015 that killed a child and a pregnant woman (see A/HRC/31/40, para. 54) and the shelling of an open field during the May 2016 escalation. OHCHR found that at least nine farmers were present in the field at the time and that shrapnel from shells fired nearby resulted in the death of an elderly woman.

C. Practices raising serious concerns of collective punishment

22. Israeli practices that may amount to collective punishment continued during the reporting period. In addition to being explicitly prohibited by international humanitarian law,[11] collective punishment violates a range of human rights and may amount to a war crime.[12]

23. In the occupied West Bank, a commonly used form of collective punishment is the punitive demolition of homes, generally belonging to the families of attackers who killed Israelis, resulting in forced evictions and the risk of forcible transfer. According to the Office for the Coordination of Humanitarian Affairs, the practice of punitive demolitions, suspended until 2014, increased significantly during the reporting period, with 40 residential structures demolished or sealed off, displacing 237 persons, including 106 children.

24. In May 2016, the Committee against Torture observed that punitive demolitions constitute a violation of article 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and called upon Israeli authorities to end the practice (see CAT/C/ISR/CO/5, para. 41).

[11] For example, see Fourth Geneva Convention (article 33), Hague regulations (article 50) and Customary International Humanitarian Law (rule 103).

[12] See articles 6, 7, 9, 14 and 16 of the International Covenant on Civil and Political Rights, General Assembly resolution 2200 A (XXI), annex.

25. During the reporting period, there was also an increase in the practice of Israeli authorities delaying the return of bodies of actual or alleged Palestinian attackers or suspects killed by Israeli security forces. At the time of writing, at least 12 bodies were still being held, several since October 2015. Although security considerations have been put forth at various times as the rationale for such delays, the Secretary-General is concerned that the extensive delay in returning bodies is being carried out with punitive intent against the families of the deceased. A commitment to release bodies for the purpose of burial "within a short space of time" was made by the Government of Israel to the nation's High Court of Justice in the case of *Ewisat v. The Israel Police et al.* (HCJ 2882/16) on 5 May 2016.[13] However, after a gun attack in Tel Aviv in early June 2016, the new Minister of Defence issued an order not to return bodies as a measure "to deter potential attackers and their families".[14] In addition to amounting to collective punishment, the withholding of bodies is inconsistent with Israel's obligations as an occupying Power pursuant to the Fourth Geneva Convention (articles 27 and 30) and violates the prohibition of torture and ill-treatment.

26. The closure of towns where actual or alleged Palestinian attackers resided is among the broadest forms of punishment employed by Israeli authorities. For example, on 3 February 2016, three residents of Qabatiya carried out an attack in East Jerusalem in which they injured a policeman prior to being killed. Immediately after, Qabatiya was raided by Israeli security forces and its seven entrances were closed off for over three days. Passage for the town's 20,000 Palestinian residents was restricted, severing family and business links. Fourteen schools were reportedly closed in that period, and approximately 700 university students from Qabatiya were barred from attending classes on 6 February. The main vegetable market in town, the largest in the northern occupied West Bank, was also forced to close as trucks and vendors were not permitted to enter or exit.

27. Israeli authorities do not give detailed reasons for their specific actions, but instead usually make generic security claims. During a media interview, however, an Israel Defense Forces colonel highlighted the importance of economic levers having a massive influence and being an extremely efficient way of sending a message. Another colonel explained the tactical use of collective punishment and intimidation measures towards "dangerous groups", comprising lists of 100 to 150 persons from various villages whom Israeli authorities considered to be potential attackers, stating that those who could be arrested, were arrested; that those for whom there was no reason to arrest were warned; and that the homes of others were mapped and then searched every night. He added that pressure was also exerted on their families and that it was made clear to them that if their children involved themselves in terror, the equipment the families used to provide for themselves, whether it was farming equipment or engineering tools, would be confiscated.[15]

28. In Gaza, the blockade and restrictions on movement continued to undermine the civil, political, economic, social and cultural rights of Palestinians. Socioeconomic indicators remain bleak, with acute crises in the public utility

[13] High Court of Justice, 2882/16.

[14] "Following Tel Aviv attack, Lieberman orders holding of terrorists' bodies", *Haaretz*, 9 June 2016.

[15] "Israel Defense Forces colonel: Hebron soldier had 'no need to shoot'", *YnetNews*, 29 April 2016.

sectors. According to the Palestinian Central Bureau of Statistics, the unemployment rate was 41.2 per cent. According to the Office for the Coordination of Humanitarian Affairs, the rate of aid dependency was 80 per cent, and as of May 2016, an estimated 75,000 people remained displaced from the escalation of hostilities in 2014. The rate of reconstruction and recovery remains well below the level needed, owing both to continued restrictions on the entry of goods and unfulfilled pledges of assistance by the international community. The impact of the blockade is further exacerbated by the almost continuous closure by the Egyptian authorities of the Rafah passenger crossing and by Jordan's increasing refusal to grant passage to Palestinians from Gaza through the Allenby crossing.

29. Following the escalation of hostilities in 2014, Israel introduced measures that considerably eased the movement of people and goods into and out of Gaza. Since the end of 2015, however, the gains started to be reversed. Worrisome measures instituted during the reporting period include the addition of crucial raw materials to the dual-use list, temporary restrictions on the entry of cement and other materials needed for reconstruction and recurring interrogations and confiscations or withdrawals of permits for traders and merchants.

30. Of particular concern was the significant drop in early 2016 of the approval rate for medical exit permits, which reached its lowest level since October 2009 (with the exception of the 2014 hostilities period).[16] There has also been a worrisome five-fold increase in the demand by the Israeli General Security Services for security interviews before medical exit applications are considered. In November 2015, the Coordinator of Government Activities in the Territories announced that only a first-degree relative would be allowed to accompany patients across the Erez checkpoint, and that security interviews would be required for all patient companions up to 55 years of age (an estimated 94 per cent of the population of Gaza).

31. Those practices raise alarm as some individuals called in for interrogations, including patients and would-be companions, have indicated to OHCHR that they had to resist pressure to collaborate with intelligence services. If substantiated, such practices can be construed as a form of coercion to extract information, which is forbidden under international law.[17]

32. The Secretary-General is particularly alarmed at the restrictions imposed by Israeli authorities on the movement and work of the staff of international and national human rights and humanitarian organizations operating in Gaza. Such measures have significantly impacted the work of those organizations. According to the Office for the Coordination of Humanitarian Affairs, by April 2016, the monthly approval rate of permits for travel from Gaza of national staff of the United Nations and international NGOs dropped significantly, to 24 per cent, while averages in the previous five years ranged from 70 to 80 per cent.[18]

[16] World Health Organization, "Health access for referral patients from the Gaza Strip", May 2016. Available from www.emro.who.int/images/stories/palestine/WHO_monthly_Gaza_access_report-May_2016_final.pdf?ua=1.

[17] See Fourth Geneva Convention (article 31) and Hague regulations (article 44).

[18] See www.ochaopt.org/content/monthly-humanitarian-bulletin-may-2016.

D. Arrest and detention

33. In the context of the upsurge in attacks against Israelis, demonstrations and clashes between Palestinians and Israeli security forces, there has been an alarming surge in arrests and detentions. According to the Commission of Prisoners and Ex-Prisoners' Affairs, a total of 7,800 Palestinians from the occupied West Bank and Gaza, including 2,400 children, were arrested and detained by Israeli security forces for varying durations during the reporting period.[19] Most were held in facilities on Israeli territory, in contravention of international humanitarian law.[20]

34. The human rights organization B'Tselem issued data provided by the Israeli Prison Service showing that the overall number of Palestinians held in its facilities at any one time peaked at the end of 2015 at 6,321 inmates, the highest number since June 2010. The number of Palestinians in administrative detention steadily increased during the reporting period, peaking on 30 April 2016 at 692, including 13 children. That represents the highest number of adults and children held without charge at any given time since early 2008. In a rare move, three Jewish-Israeli men were also held in administrative detention following the suspected settler attack in Duma village on 31 July.

35. Some administrative detainees resorted to prolonged hunger strikes to draw attention to their arbitrary detention, such as journalist Mohammed Al-Qiq, whose protest lasted 94 days, until February 2016. In May, the Committee against Torture joined the Human Rights Committee in calling upon Israel to end the practice of administrative detention and to ensure that all individuals currently held in administrative detention be afforded all basic legal safeguards (see CAT/C/ISR/CO/5).

36. During the reporting period, there was also a dramatic increase in the overall number of children in detention. According to Defence for Children International, some 163 Palestinian children were in Israeli detention at the start of the reporting period, increasing to 414 by the end of April 2016, after peaking at 440 at the end of February. That was the highest number of detained children since January 2008. In March 2016, a bill to allow courts to sentence children under 14 years of age to imprisonment in certain limited circumstances was approved by the Ministerial Committee for Legislation.

37. According to the Higher National Commission for Prisoners and Detainees Affairs, an estimated 300 people were arrested in Gaza by Israeli security forces passing through the Erez checkpoint, at sea or while breaching the Gaza-Israel perimeter fence. At least 35 among them were reportedly children. The majority of those arrested were usually released back into Gaza within 24 to 48 hours. Fishermen are particularly vulnerable to arbitrary arrest as highlighted in paragraph 15 above. There has been a worrisome increase in the number of fishermen being detained over the years, with the number of those arrested in the first half of 2016 already outstripping the total number in 2015. Israel claims that its restrictions on maritime activities in Gaza are necessary to prevent the illicit smuggling of arms by militant groups operating there. Nevertheless, only two fishermen[21] out of 130 arrested during the reporting period were charged with a crime, although not related to

[19] See http://freedom.ps/freedom/.

[20] See Fourth Geneva Convention (article 76).

[21] "Palestinian fishermen brought to Israeli court", *Maan News Agency*, 30 December 2015.

smuggling,[22] with one report of an individual disguised as a fisherman arrested on a boat allegedly with contraband.[23]

E. Accountability for human rights and humanitarian law violations committed by Israeli security forces

38. Pursuant to international law, allegations of violations and abuses of international human rights law and international humanitarian law must be promptly, thoroughly, effectively, independently, impartially and transparently investigated and perpetrators brought to justice. Victims also are to have access to a prompt, adequate and effective remedy (see General Assembly resolution 60/147). Accountability is crucial not only in order to bring perpetrators to justice but also in order to deter future violations (see A/HRC/28/45, paras. 32 and 33).

39. The Secretary-General and the United Nations High Commissioner for Human Rights have on several occasions expressed their concern at the lack of accountability in Israel for violations of international human rights and humanitarian law.[24] Various independent committees of experts as well as international, Israeli and Palestinian human rights organizations have also expressed such concerns and extensively documented the flaws in Israel's accountability mechanisms in addressing the killing, injury, torture and ill-treatment and the destruction of Palestinian property.[25]

40. Shortcomings in the Israeli justice system identified by those organizations include physical, financial, legal and procedural barriers that restrict the ability of Palestinians, particularly those living in Gaza, to gain access to justice. Findings suggest a consistent failure by the Military Advocate General, who heads the military justice system, and the Attorney General to open investigations in cases where there is prima facie evidence, including eye-witness testimony, medical reports and audiovisual materials indicating that actions by State agents were unlawful. When investigations are opened, they frequently fail to meet human rights standards, and only a small number of alleged perpetrators, mainly at the rank-and-file level, are brought to justice, facing mainly lenient indictments and sentences.

41. The Israeli legal system does not criminalize certain international crimes, which hampers prosecution efforts. At the same time, certain cases do not trigger the duty to investigate, for example, cases in which those implicated have acted in line with military policies or open-fire regulations. The challenge here is to consider whether such policies or regulations are compliant with international law. Although

[22] According to UNRWA, another four fishermen are in detention. Their legal status is unknown.

[23] Yaakov Lappin, "Security forces arrest suspected Gazan weapons smuggler", *Jerusalem Post*, 16 May 2016.

[24] See A/68/502, paras. 29-35; A/HRC/24/30, paras. 46-48; A/69/47; A/HRC/22/35, paras. 66-82, A/HRC/28/45, paras. 26-33 and A/69/347, paras. 52-69, 81 and 84.

[25] Recent examples include the report of the independent commission of inquiry established pursuant to Human Rights Council resolution S-21/1 (A/HRC/29/CRP.4); B'Tselem, *The Occupation's Fig Leaf: Israel's Military Law Enforcement System as a Whitewash Mechanism*, May 2016. Available from www.btselem.org/download/201605_occupations_fig_leaf_eng.pdf; Amnesty International, "Time to address impunity: two years after the 2014 Gaza/Israel war", 7 July 2016. Available from www.amnesty.org/en/documents/mde15/4199/2016/en/.

the lack of an outcome in some specific cases may be justifiable, a clear pattern of impunity appears evident.

Accountability for killings and injury in law enforcement operations

42. In 2011, the Military Advocate General adopted a policy requiring an immediate investigation into every killing of a civilian by the Israel Defense Forces. The policy, is limited, however, to the killing of individuals designated by the Military Advocate General as civilians and does not apply if it is clear that the activity in the course of which the civilian was killed was of a real combat nature.[26] The office of the Attorney General adopted a similar policy when reviewing cases where civilians were killed as a result of police action when operating alongside or under military orders in the occupied West Bank.[27] Those exceptions appear to have been interpreted very broadly over the years, and many civilian deaths have never been investigated. Furthermore, a mandatory investigation is not required in cases where civilians have survived, even when they suffer severe or life-threatening injuries due to the actions of Israeli security forces.

43. In the occupied West Bank, since the second intifada, an estimated 3.5 per cent of complaints have led to investigations that resulted in an indictment being issued.[28] Although the adoption of that policy by the Military Advocate General in 2011 led to a slight increase in the rate of investigation of fatalities compared with the previous decade, overall indictments and convictions rates did not change.

44. According to the Ministry of Justice of Israel, as of July 2016, 24 criminal investigations had been opened in connection with the death of 190 Palestinians and the injury (including by tear gas inhalation) of over 15,000 by Israeli security forces since the escalation of violence in October 2015.[29] Seventy-one cases were still under consideration for investigation by the Military Advocate General and the office of the Attorney General. In another 71 shooting incidents that resulted in death, both entities determined that no additional legal or disciplinary proceedings were required.

45. The only indictment pronounced so far was in the case of the above-mentioned killing of Abdelfattah al-Sharif. At the time of writing, the soldier responsible for the killing was facing trial at the Jaffa military court for manslaughter. That indictment contrasts with a decision by the court in April 2016 that upgraded the charge against an alleged Palestinian hit-and-run driver from manslaughter to murder under pressure from the victim's family, even though the driver had claimed it was an accident and had surrendered to the Palestinian police. Meanwhile, there has been no investigation in the killing of Ramzi al-Qasrawi and the cases of many

[26] See High Court of Justice, case No. 9594/03, and http://mfa.gov.il/MFA/AboutIsrael/State/Law/Pages/New_investigation_policy_Palestinian_casualties_IDF_fire_Judea_Samaria_6-Apr-2011.aspx.

[27] See Turkel Commission, "Israel's Mechanisms for Examining and Investigating Complaints and Claims of Violations of the Laws of Armed Conflict According to International Law". Available from www.turkel-committee.gov.il/files/newDoc3/The%20Turkel%20Report%20for%20website.pdf.

[28] Figures are estimates based on status of all types of claims presented by B'Tselem to the Military Advocate General and a review conducted by Yesh Din of all fatality cases investigated by the Military Police Criminal Investigations Division since 2000.

[29] Letter from the Israeli Legal Counselling and Legislation Department, 15 July 2016.

other individuals allegedly killed under circumstances similar to those in the death of Abdelfattah al-Sharif.

46. In Gaza, OHCHR is not aware of any investigations related to the 23 civilians killed and over 650 injured in access-restricted areas during the reporting period, including during demonstrations. Human rights organizations have indicated that few of the incidents in which the Israel Defense Forces killed or injured Palestinians while enforcing access restrictions in Gaza's perimeter areas have ever been investigated, and no soldier has been indicted for such an offence since the end of the second intifada. One obstacle is that the 2011 policy of the Military Advocate General does not pertain to Palestinians killed or injured in Gaza, since Israel does not consider Gaza an occupied territory and thus considers all of its operations there to be of a "combat nature". Furthermore, Israeli authorities have stated to human rights organizations that investigations would not be opened because the victims had entered "prohibited areas" and/or the soldiers had acted in line with the rules of engagement.[30] However, according to the Basic Principles on Use of Force and Firearms by Law Enforcement Officials, the mere entrance into a prohibited area does not meet the threshold necessary for the use of force. Firearms may only be used when necessary to prevent risk to life or serious injury, which has not been the case in most situations within the access-restricted areas that have been documented.

47. The Secretary-General is concerned that one of the elements driving impunity is that the policies regulating the use of force may not be aligned with international human rights law and standards, in particular the Basic Principles on Use of Force and Firearms by Law Enforcement Officials. The open-fire regulations of the Israeli police, which are applicable in East Jerusalem, were updated in September 2015 and partially declassified in July 2016 following a court petition by human rights organizations, which questioned their consistency with relevant international standards. Similar concerns arose with regard to the rules of engagement of the Israel Defense Forces for their operations in the occupied West Bank and in Gaza, which remain confidential.

48. In April 2016, the Military Advocate General closed the investigation into an occupied West Bank brigade commander who, on 3 July 2015, had shot and killed Mohammad Qusbah, a 17-year-old who was attempting to escape after throwing a stone at the officer's vehicle, near the village of Al-Ram. The investigation reportedly found that the officer had followed proper arrest procedures, including warning calls, shots into the air and two shots aiming at the legs. According to the Military Advocate General, by firing while he was running, the officer had made "a professional mistake … but one that was made in clearly operational circumstances" that led to the shots hitting the child in the upper body and killing him.[31] It is not known whether the officer was sanctioned.

49. As part of OHCHR monitoring of the case, questions were raised about the factual findings of the investigation. Regardless of those questions, the arrest procedures of the Israel Defense Forces, as described by the Military Advocate General in the incident involving Mohammad Qusbah, appear to be inconsistent

[30] As communicated to the Palestinian Centre for Human Rights and the Al Mezan Centre for Human Rights.

[31] Charlotte Silver, "Israel excuses killing of fleeing Palestinian teen as 'professional mistake'", *Electronic Intifada*, 12 April 2016.

with international human rights law, in which it is clear that firearms may only be used against an escaping suspect if the latter poses an immediate or ongoing threat (see A/66/330, para. 88 (c)). At the time Mohammad Qusbah was shot, he did not appear to pose any such threat. Furthermore, the arrest procedures do not appear to require that use of less lethal force be considered before resorting to firearms. Following the incident, the Israel Defense Forces reportedly revised its orders to ban opening fire at fleeing suspected attackers.[32]

50. Unfortunately, calls to review the policies of the Israeli security forces and the Government that prima facie appear to be in contravention of international law have generally gone unheeded. Some structural concerns undermine the ability of the Military Advocate General to credibly carry out such reviews, especially where the office was involved in the development or implementation of those policies (see A/70/421, paras. 55 to 58). While the Attorney General and the Supreme Court both provide civilian oversight of military investigations and prosecutions, the oversight is limited and often fails to review the legality of the policies themselves or the orders issued at the highest levels.

Accountability for violations committed during hostilities

51. Pursuant to international law, investigations should be opened in response to every credible allegation of a war crime.[33] However, only around 7 per cent of all claims filed with the Israeli authorities for violations committed during the last three escalations in Gaza were ever investigated, with less than 0.5 per cent resulting in convictions.[34] Often, rank-and-file soldiers are investigated for minor offences while decisions or actions by senior level commanders are not scrutinized. The longest sentence served to date for a crime perpetrated during hostilities was 15 months of imprisonment for credit card theft.[35]

52. With regard to the 2014 hostilities, only one command-level officer came under investigation after an audio recording surfaced in 2015 that indicated that he had ordered his troops to shell a protected site in reprisal for the death of one of his soldiers.[36] The Military Advocate General found fault with the officer's action but closed the case in early 2016 without issuing an indictment. Little information was given about the basis for the decision but statements from the Military Advocate General seem to indicate that the ruling relied heavily on the version of events described by the officer in question and concluded that there was no evidence suggesting that "he had not acted out of military necessity".[37]

53. Two years after the 2014 escalation, justice remains elusive. At least 354 complaints to the Military Advocate General were filed by NGOs in connection with the hostilities. The latest public update from the Military Advocate General on the status of its investigations was published in June 2015. Several organizations,

[32] Gili Cohern, "IDF refines orders: soldiers not to fire at fleeing Palestinian attackers", *Haaretz*, 12 August 2015.

[33] Customary international humanitarian law, rule 158.

[34] Based on data from B'Tselem: the Israeli Information Centre for Human Rights in the Occupied Territories, the Palestinian Centre for Human Rights, the Al Mezan Centre for Human Rights and Adalah: the Legal Centre for Arab Minority Rights in Israel. Data cross-referenced with updates of the Military Advocate General.

[35] Ibid.

[36] Yonah Jeremy Bob, "Analysis: Israel on thin ice with the ICC", *Jerusalem Post*, 16 June 2016.

[37] Ibid.

including the United Nations, have since been requesting updates on specific cases, but no response or details have been provided. Based on press briefings and Israel's interactive dialogue with the Committee against Torture in early 2016 (see CAT/C/SR.1419), the General Staff Mechanism for Fact-Finding Assessments[38] is said to have reviewed 225 "exceptional incidents". Of those, the Military Advocate General reportedly opened investigations into 25 cases of alleged soldier misconduct; 7 were still open as of July 2016 while the others had been closed. One indictment has been issued in a case of looting, with no convictions to date. According to recent reports, decisions in the pending investigations are not expected for several more months.[39]

54. It is not clear how many cases, if any, are being assessed by the General Staff Mechanism for Fact-Finding Assessments in relation to events in 2014, or if all the cases have been closed, including at least four involving attacks on United Nations facilities. Non-governmental organizations have appealed to the Attorney General concerning at least eight decisions by the Military Advocate General not to open investigations.

55. During the reporting period, at least one criminal complaint was filed by the Palestinian Centre for Human Rights on behalf of the family of a victim of the May 2016 escalation. The Military Advocate General has not issued any communication as to whether the General Staff Mechanism for Fact-Finding Assessments is assessing the case.

Civil remedies

56. There is limited up-to-date and publicly available information on successful tort claims against the State of Israel for alleged wrongdoing by the Israel Defense Forces in the Occupied Palestinian Territory. According to the Government of Israel, as of March 2016, there were 196 such cases, including 85 from Gaza, pending before the courts (see CAT/C/SR.1419, para. 32). Human rights organizations have indicated, however, that less than 10 per cent of claimants have ever had any success with compensation claims, and most of those have been related to cases in the occupied West Bank.[40]

57. Compensation claims in the vast majority of cases from Gaza fail owing to physical, financial, legal and procedural barriers. Those include exceptions written into Israeli law, including the 2014 declaration of Gaza as "enemy territory", that have made Israeli authorities effectively immune to civil liability for their actions in Gaza. In the context of the 2014 hostilities, civil society organizations submitted 1,148 notifications to the Ministry of Defence within the prescribed 60-day window from the time of the incident to file a compensation claim with Israeli courts. Given barriers such as a lack of permission to travel to Israel as well as the prohibitive cost

[38] The General Staff Mechanism for Fact-Finding Assessments was established by the Chief of Staff of the Israel Defense Forces to examine "exceptional incidents" that occurred during the 2014 hostilities. It was created to counter criticisms that the Military Advocate General had not collected sufficient, balanced and timely information before determining whether to open investigations. In a previous report, the Secretary-General identified some of the shortcomings of the Mechanism, which continue to exist (see A/70/421, paras. 55-58).

[39] Yonah Jeremy Bob, "No decision on Hannibal Protocol incident likely for several more months", *Jerusalem Post*, 25 February 2016.

[40] See Yesh Din, "Exceptions: prosecution of IDF soldiers during and after the second intifada, 2000-2007", pp. 26 -30.

of filing compensation claims, only a very small percentage of claims have actually been filed since the initial notifications were provided. As the two-year statute of limitations for Palestinians to file such claims approaches, it is unlikely that any more compensation requests will be made in relation to the 2014 hostilities.[41]

Accountability for ill-treatment and torture of detainees

58. Allegations of ill-treatment and torture during arrests, transfers and interrogations of detainees have been extensively reported over the years. Accountability mechanisms differ depending on whether the official allegedly involved is a soldier, an agent of the Internal Security Agency, a police officer or a prison warden.[42]

59. The interrogation practices of the Internal Security Agency have regularly come under scrutiny since the 1970s. In 1999, Israel's High Court of Justice forbade certain types of interrogation methods, including physical pressure, that had been employed by Internal Security Agency officers. Notwithstanding, many of those practices continue to be reported. The Public Committee against Torture in Israel, an Israeli NGO, reviewed over 1,000 complaints of ill-treatment against the Internal Security Agency since the High Court of Justice ruling and found that none of them had led to the opening of a criminal investigation.[43] The Government has argued that there was "insufficient evidentiary basis" to justify the opening of criminal investigations. However, human rights organizations and OHCHR have indicated that there was credible evidence of violations that would have warranted, at the very least, the opening of investigations. Part of the challenge is that torture is not a crime in Israel and officers can refer to the so-called "necessity defence" clause, contained in section 34(11) of the Penal Law, to justify certain practices that result in death or injury to others, in contravention of international standards, as highlighted by the Committee against Torture (see CAT/C/ISR/CO/5).

60. Although a civilian torture complaint mechanism was established under the Ministry of Justice in June 2013, the mechanism has yet to issue a recommendation that a criminal investigation be launched. At the same time, organizations have claimed that the number of complaints of torture or ill-treatment against the Internal Security Agency has quadrupled since June 2013.[44] It is of great concern that the Government of Israel views the presentation of such complaints "as a method to burden and hinder the security agencies in Israel in their ongoing fight against terrorism" (see CAT/C/ISR/5, para. 11).

Addressing challenges

61. The Government of Israel has enacted a number of measures over the years aimed at addressing some of the challenges identified above (see CAT/C/ISR/5). Those measures have been piecemeal, however, and have not resulted in significant improvements in accountability.

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[41] In comparison, Israelis have seven years from the time of an incident to file a compensation claim and are not required to submit a notification to authorities beforehand or pay a guarantee.

[42] See http://stoptorture.org.il/wp-content/uploads/2016/04/PCATI-CAT-report.pdf.

[43] See http://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/ISR/INT_CAT_CSS_ISR_23995_E.pdf.

[44] The Public Committee against Torture in Israel and Physicians for Human Rights.

62. In June 2010, the Government of Israel established the Public Commission to Examine the Maritime Incident of 31 May 2010 (the Turkel Commission), which, inter alia, was entrusted with assessing the compliance of Israeli criminal investigations with international law. The report of the Commission was published in February 2013 and included 18 recommendations for addressing issues such as delays in investigations, problems with impartiality and independence, and gaps in the legal framework. Human rights groups and the United Nations welcomed the report, noting that its implementation would be a positive first step towards tackling impunity (see A/68/502, para. 29 and A/69/347, para. 60).

63. In January 2014, the Prime Minister of Israel established an interministerial team, the Ciechanover Commission, to review the implementation of the Turkel Commission recommendations. The Ciechanover Commission published its findings in September 2015, which were approved by the Security Cabinet of Israel on 3 July 2016.

64. One of the key recommendations of the Ciechanover Commission was that the Government appoint, as a matter of priority, a standing body to monitor the full and timely implementation of the Turkel Commission recommendations. It remains to be seen if that and other time-bound recommendations by the Ciechanover Commission will be implemented. It also instructed the Chief Military Prosecutor to issue a directive setting out a clear time frame for criminal complaints to be processed and investigations concluded, and demanded that the Military Advocate General and the Attorney General publish their reasoning for the opening or closing of investigations. Both measures, if implemented, could help to improve the promptness and transparency of investigations. The Ciechanover Commission also noted that, although some of the Turkel Commission recommendations had been or were in the process of being implemented, further progress would be contingent upon the allocation of additional resources to relevant bodies, including the Ministry of Justice and the Military Advocate General.

65. The High Commissioner for Human Rights has noted that the Ciechanover Commission did not issue instructions for the full implementation of the first two recommendations of the Turkel Commission, namely, incorporating international norms and standards, including with respect to war crimes, into national legislation; and holding military commanders and civilian superiors responsible for offences committed by their subordinates (see A/HRC/31/40/Add.1, para. 37). The Ciechanover Commission noted instead that the office of the Attorney General was in the process of drafting bills that would seek to anchor the crime of torture and crimes against humanity in domestic legislation. It noted, however, that little information on that process is publicly available. It is of concern is that war crimes as a category have not been included among the offences under review for incorporation into national law, and that the anchoring of responsibility of military commanders and civilian superiors in Israeli law is said to require further examination.[45]

66. Concerns also remain as to whether authorities are willing to address the underlying causes of impunity. The Secretary-General and the High Commissioner for Human Rights are concerned about statements by representatives of the Government and other high officials that unambiguously condone impunity and the

[45] Report of the Ciechanover Commission. Available from www.pmo.gov.il/Documents/ReportEng.pdf.

use of force by Israeli police and defence forces in all instances. For instance, the Jerusalem police chief stated that "anyone who stabs Jews or hurts innocents — his due is to be killed".[46] Similarly, while commenting on the ruling in the case involving Mohammad Qusbah, the then Yisrael Beytenu party leader and current Minister of Defence, Avigdor Lieberman, praised the Military Advocate General's decision to close the file and noted "that everyone should know that the blood of Israeli soldiers is not free". In reference to the case involving Abdelfattah al-Sharif, he added that the Military Advocate General should also "free from detention the soldier from Hebron".[47]

67. New challenges are arising with recent legislative measures to increase the powers of the authorities at the expense of the rights of individuals. For example, two bills have recently been presented in the Knesset that put the families of attackers and alleged attackers at risk of residency revocation, "deportation" or added restrictions on residency.[48] Similarly, recently adopted laws stiffen penalties[49] for stone-throwing, including by stripping stone throwers and their families of their national insurance benefits,[50] imposing fines and legal expenses on assailants or fines on the parents of convicted children.[51] The Counter-Terrorism Law of 2016 expands the definition of a "terrorist entity" and of "support to a terrorist entity" and contains broad and ambiguous language concerning "incitement". It also makes permanent draconian provisions that were being used as temporary measures such as those that extended detention periods for security suspects without judicial review, the extension of their detention ex parte, the use of secret evidence and the exemption of the Internal Security Agency interrogations from being recorded.

68. Recent decisions by human rights organizations to cease their engagement with the Israeli justice system reflect a lack of trust in Israeli institutions to ensure accountability for violations against Palestinians. In May 2016, B'Tselem, a leading Israeli human rights organization, announced it would no longer present claims to the Military Advocate General on behalf of Palestinian victims because they had come "to the realization that there is no longer any point in pursuing justice and defending human rights by working with a system whose real function is measured by its ability to continue to successfully cover up unlawful acts and protect perpetrators".[52] Some prominent human rights organizations have started to call upon countries with universal jurisdiction and other international justice mechanisms to intervene. OHCHR has indicated also that individual rights-holders, particularly in Gaza, are disillusioned with the ability of Israeli authorities to ensure accountability for violations perpetrated against Palestinians.

69. Non-governmental organizations have played a leading role in pushing Israel's investigatory mechanisms to act on hundreds of complaints by collecting victim and witness statements on behalf of authorities, identifying evidence, facilitating

[46] "Two stabbed in Jerusalem, teen Palestinian assailant killed", *Times of Israel*, 10 October 2015.

[47] Yonah Jeremy Bob, "Case closed against IDF colonel who shot dead Palestinian rock thrower", *Jerusalem Post*, 10 April 2016.

[48] The bills are expected to be discussed by the Ministerial Committee for Legislation in August 2016.

[49] Penal Code, amendments 119 and 120.

[50] National Insurance Law (combined version), amendment 163.

[51] Youth Law, amendment 20.

[52] B'Tselem, *The Occupation's Fig Leaf: Israel's Military Law Enforcement System as a Whitewash Mechanism*, May 2016. Available from www.btselem.org/download/201605_occupations_fig_leaf_eng.pdf.

transport and translation services for victims and their families and providing legal aid to plaintiffs. There is a serious risk that the already low number and quality of investigations will further decline as organizations cease their cooperation with the justice system.

IV. Conclusions

70. Serious challenges persist to ensuring accountability for violations of international human rights and humanitarian law against Palestinians. Despite efforts to strengthen the system of accountability, critical key steps, notably including those recommended by Israeli commissions, remain unimplemented, partially implemented or are not followed in practice.

71. In order for meaningful change to happen, reforms are necessary. Without them, the failure to deliver accountability will continue to create a more permissive environment for Israeli security forces to commit human rights violations. Accountability for violations committed by all parties is a key factor in breaking the cycle of violence and moving towards a peaceful resolution of the conflict.

V. Recommendations

72. The following recommendations should be read in conjunction with the numerous recommendations contained in previous reports of the Secretary-General and the High Commissioner for Human Rights.

(a) Israel should take all measures to ensure full respect for its obligations under international humanitarian law, in particular the principles of distinction, proportionality and precaution, and ensure accountability for all violations;

(b) Israeli authorities should take all measures necessary to prevent incidents of excessive use of force during law enforcement operations. In cases in which force is used, including in the access-restricted areas near the Gaza fence, there should be compliance with international human rights law and standards. The authorities should ensure that independent reviews are conducted promptly and that any necessary revisions to rules of engagement, open-fire regulations and arrest procedures are made in order to ensure their compliance with international law;

(c) The use of force in the context of protests, clashes and demonstrations must be strictly consistent with international law. Regulations and practices with respect to the use of rubber-coated metal bullets and black sponge bullets should be reviewed to ensure that those weapons are only permitted to stop individuals engaged in violence, and not as a general tool to disperse a crowd. The use of firearms should only be permitted where there is an imminent threat of death or serious injury;

(d) Israel should ensure that medical assistance is promptly provided to persons wounded by security forces, without obstruction or discrimination. To that end, Israeli security forces should issue clear instructions to the effect that the wounded must receive immediate attention, without discrimination, and

that medical personnel, including Palestinian ambulance crews, are not to be obstructed in performing their duties;

(e) Prompt, thorough, effective, independent and impartial criminal investigations should be conducted into all instances in which firearms have been used by law enforcement officials, in particular where such force has resulted in death or injury, and the outcome of the process should be made public. Those responsible for violations should be held accountable and prosecuted in fair trials, with charges and sentences commensurate with the gravity of the offences. As an initial step to reforming the investigative system, the recommendations of the Turkel Commission and Ciechanover Commission should be fully implemented;

(f) Israel should adopt legislation on international crimes, such as torture and war crimes, and establish independent mechanisms to review government and military policies and to ensure command responsibility;

(g) The blockade of Gaza should be lifted and all practices that amount to collective punishment, including restrictions on freedom of movement across the Occupied Palestinian Territory, punitive demolitions of homes, punitive residency revocations, cutting of benefits, punitive closures of towns and delays in returning bodies for burial, should be ended;

(h) Israel should end the practice of administrative detention and charge or release any detainees currently being held in administrative detention;

(i) All children should be treated with due consideration to their age, in accordance with international law, and should be detained only as a last resort;

(j) The authorities and Palestinian armed groups in Gaza should ensure respect for international humanitarian law, in particular the principles of distinction, proportionality and precaution, and should ensure accountability for all violations.